IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL WRIT PETITION NO.2341 OF 2005

Mohd.Nabi Ahamed Nabi Kureshi]
Age-25 years. R/o.Rafiq Nagar]
Zopadpatti, Near Faizal Masjid,]
Shivaji Nagar, Govandi,]
Mumbai - 400 043.] Petitioner.
(The petitioner is detained at] (Detenue)
Nasik Road, Central Prison at]
Nasik]

versus

1. Shri.A.N.Roy,]
Commissioner of Police]
Greater Bombay.]

2. The State of Maharashtra]

3. The Superintendent Nasik]
Road, Central Prison, Nasik] Respondents.

ALONG WITH

CRIMINAL WRIT PETITION NO.2344 OF 2005

Jamil Ahmed Nabi Qureshi]
Age-35 years. R/o.Rafiq Nagar]
Zopadpatti, Near Faizal Masjid,]
Shivaji Nagar, Govandi,]
Mumbai - 400 043.] Petitioner.
(The petitioner is detained at] (Detenue)
Nasik Road, Central Prison at]
Nasik]

versus

1. Shri.A.N.Roy,]
Commissioner of Police]
Greater Bombay.]

2. The State of Maharashtra]

3. The Superintendent Nasik]
Road, Central Prison, Nasik] Respondents.

Mr.U.N.Tripathi for the petitioners.
Mrs.A.S.Pai, APP, for the State.

CORAM : D.G.DESHPANDE

S.A.BOBDE, JJ.

DATED : JULY 7, 2006.

COMMON ORAL JUDGMENT

1. We are disposing of both these petitions by this common order because the detention orders passed in both the petitions are passed on same date; both the petitioners are involved in same C.R. and, Advocate Mr.Tripathi, appearing for both the petitioners, did not raise separate grounds for both the petitioners and, he raised only one ground as applicable to both the petitions. Therefore, this common order.

2. Petitioners, who are the detenues , have filed these petitions challenging the order of detention dated 30th June 2005 under Section 3(1) of the M.P.D.A. Act, 1981 passed by the Commissioner of Police, Greater Bombay. In the petitions number of grounds were raised by the petitioners but Advocate Mr.Tripathi, appearing for the petitioners, restricted himself to one ground only and that is Ground No.6(B). As per this ground, the petitioners were already in judicial custody on 30.6.2005. Therefore, they

were prevented from acting in any manner prejudicial to the maintenance of public order and there was no necessity to pass detention order. Further the petitioners bail application was rejected by the Sessions Court, Bombay and more particularly taking into consideration the role played by the detenue in the incident, no court would have granted bail to the detenues. Therefore, there was no cogent material before the detaining authority to come to the conclusion that the detenues would avail bail under normal law of land in future. And, therefore, on this ground alone the detention order is liable to be quashed.

3. Advocate Mr.Tripathi, in support of this ground, has contended that the bail application of the co-detenue Jamil Ahmed Nabi Qureshi was rejected by the High Court and, therefore, there was no possibility of petitioner-Mohamed Kureshi getting bail in the said offence. He relied upon certain judgments of the Supreme Court in support of his contention.

4. On the other hand, the learned APP, appearing for the State, urged that the facts of

the C.R., as disclosed in the grounds of order, do not make out a case that there was no possibility of petitioner-Mohamed Nabi Kureshi getting bail in future. She also contended that the co-detenue Jamil Qureshi's application for bail in the High Court was not rejected on merits but was rejected on the ground that the investigation was in progress. She stated that from the circumstances, the detaining authority was justified in coming to the conclusion that the petitioner-Mohd.Nabi Kureshi was likely to get bail in future and resort to his illegal activities and, therefore, the detention order did not call for interference.

5. The Case i.e. the C.R. registered against the petitioners is C.R.No.110/05 under Sections 307, 397, 341, 363 and 120(b) I.P.C r/w Sections 4, 25 of the Indian Arms Act. The facts of that C.R are that there was business rivalry between petitioner and his associates including co-detenue-Jamil Ahmed Nabi Kureshi, Akbar Ahmed Nabi Kureshi, Safiq Kifayatulla, Papwa Anismiya Rais Kureshi, Sharif Rais Kureshi, Mohammed Javed Habib Shaikh, Mohammed Aziz @ Aziz Langda @ Sagar Mohammed Husain Shaikh and other unknown

associates and the complainant. Therefore, the petitioners and their associates made plan to eliminate the said complainant. On 10.4.2005 at about 15.00 hrs. the complainant was travelling by rickshaw tempo by Panvel Sion Highway towards Antophill. When he approached near the Mankhurd Bridge, the petitioners and their associates were already waiting for him in three rickshaws. All these persons tried to stop the rickshaw of the complainant but the complainant passed from there and reached near the Punjabwadi signal, where he had to stop his rickshaw due to red signal. At that time these persons, i.e. the petitioners and their associates, stopped him, threatened him to kill on the point of sword and knife. The complainant was made to alight from his rickshaw. He shouted for help. The passers-by at the Punjabwadi rushed to help the complainant. But they were prevented by the petitioners and their associates and then the petitioner Mohammed Nabi Kureshi gave a blow of sword on the complainant's head. The complaint felt giddiness. Then he was taken to a lonely place and was assaulted with sword and knife on his head, nose, face, neck, chest stomach, back, both hands and on the legs with intention to kill him. Cash of Rs.25,000/-

was also taken away from the complainant along with mobile and wrist watch.

6. It is on this background of the matter, the offence was registered under different sections of the Indian Penal Code and Arms Act but the main Section is 307 of the Indian Penal Code.

7. Advocate Mr.Tripathi, appearing for the petitioners, contended that when the case is of conspiracy to eliminate followed by serious attack on the complainant by both the petitioners and their associates, when the Sessions Judge, has rejected the bail application of the petitioner and, the bail application of co-detenue i.e. Jamil Ahmed Nabi Qureshi was also rejected by the High Court, then there was no possibility of petitioner getting bail and there was no possibility of their indulging into similar activities.

8. It is a fact that the detaining authority in the grounds of detention has taken note of the facts that the bail applications of both the detenues have been rejected by the Additional

Sessions Judge and the bail application of co-detenue Jamil Ahmed Nabi Qureshi came to be rejected by the High Court. However, so far as the High Court's order is concerned, the learned APP pointed out that the rejection by the High Court was not merits but only because the investigation was in progression. Therefore, the rejection by the High Court is not a circumstance that is favourable to the petitioner- Mohammed Ahmed Nabi Kureshi.

9. Advocate Mr.Tripathi, appearing for the petitioners, relied upon the judgment of the Supreme Court reported in **AIR 1990 SC 1196 (Dharmendra Suganchand Chelawat v. Union of India]** which was followed by the Supreme Court in **(1991) 1 SCC 128 [Kamarunnissa v/s.Union of India and anr.]**. In Kamrunnissa's case the Supreme Court in para 13 has laid following guide-lines as under :-

> "From the Catena of decisions referred to above it seems clear to us that even in the case of a person in custody a detention order can validly be passed (1) if the authority passing the order is

> aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity and (3) if it is felt essential to detain him to prevent him from so doing. If the authority passes an order after recording his satisfaction in this behalf, such an order cannot be struck down on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court.

Same view is taken by the Supreme Court in other case. The question is, whether in the facts and circumstances there was possibility of petitioner's getting bail or, there was absolutely no possibility and, the conclusion of the detaining authority that the petitioners were likely to get bail in future, was proper and based on reliable material placed before it.

10. Looking to the facts of the present C.R.No.110/05, referred to above, it cannot be said that no court would have granted bail to the petitioners. It was a case under Section 307 of the Indian Penal Code. There were many assailants and, considering the role played by the petitioners in the assault and the weapons used by them, it cannot be said that the petitioners would not have succeeded in getting bail.

11. In his affidavit, the detaining authority in para 9, has stated as,

> "I say that I was aware that the detenu was in judicial custody in C.R.No.110 of 2005, however, though the detenu was in judicial custody when I issued the Order of Detention, there was possibility that the detenu could be granted bail under the normal law of the land and this awareness is shown by me in para 7 of the grounds of detention."

Further in the said affidavit, the detaining

authority has stated that the victim-complainant was the prime witness to the incident and there was no other eye witness to the incident. In view of these peculiar facts it cannot be said that there was no sufficient material before the detaining authority to come to the conclusion that the petitioner-Mohd.Nabi Kureshi was likely to be released on bail.

12. Our attention was drawn by advocate Mr.Tripathi, appearing for the petitioners, to the very same para of the affidavit of the detaining authority where the detaining authority observed as :-

> "If the prime witness i.e. the complainant does not support the case of the prosecution, then there was every possibility that the detenu would be released on bail or be acquitted."

13. We hold that as rightly argued by the advocate Mr.Tripathi, appearing for the petitioners, this assertion is wrong and not required. Whether the complainant supports or

not, can not be or could not have been made a ground for coming to the conclusion about petitioner’s getting bail.

14. However, the fact remains that there was only one witness to the incident as per this affidavit of the detaining authority and that was the complainant himself and, therefore, it could not be said that there was no possibility of petitioner’s getting bail.

15. In view of these facts, the detention order cannot be quashed and set aside. Hence, we pass the following order :-

:ORDER:

Both the petitions are dismissed.

Rule in both the petitions is discharged.

[D.G.DESHPANDE,J]

[S.A.BOBDE, J]